

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

THE VULCAN SOCIETY, INC., *for itself and on behalf of its members*, JAMEL NICHOLSON, and RUSEBELL WILSON, *individually and on behalf of a subclass of all other victims similarly situated seeking classwide injunctive relief*,

ROGER GREGG, MARCUS HAYWOOD, and KEVIN WALKER, *individually and on behalf of a subclass of all other non-hire victims similarly situated*; and

CANDIDO NUÑEZ and KEVIN SIMPKINS, *individually and on behalf of a subclass of all other delayed-hire victims similarly situated*,

Plaintiff-Intervenors,

-against-

THE CITY OF NEW YORK,

Defendant.
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07-cv-2067 (NGG)

MONITOR'S FORTY-SECOND PERIODIC REPORT TO THE COURT

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I. Executive Summary

This report summarizes activities relating to compliance by the City of New York (the “City”) with the Modified Remedial Order (the “MRO,” Dkt. # 1143) during the period from November 8, 2023, the date of the Monitor’s Forty-First Periodic Report (Dkt. # 2220), to February 14, 2024. The report also summarizes activities relating to the implementation of the Parties’ settlement of Plaintiffs-Intervenors’ disparate treatment claims (the “Disparate Treatment Settlement”), which the Parties agreed would fall within the Monitor’s authority as defined in the MRO. *See* Stipulation and Order dated June 5, 2015 (Dkt. # 1599); *see also* Memorandum & Order dated June 5, 2015 (Dkt. # 1598) at 10.

Part II of the report focuses on candidate processing for the Exam 7001 civil service hiring list. The City’s December 14, 2023 cumulative report on candidate attrition from the Exam 7001 list (“Attrition Metrics Report”), like previous reports, continues to show statistically significant disparities adverse to Black and Hispanic candidates in the CPAT,¹ in the Medical Exam,² and in the referral phase of character review (referrals to the Personnel Review Board (“PRB”)). The report also shows a statistically significant disparity adverse to Black candidates in CPAT voluntary attrition (the rate at which candidates fail to appear for CPAT testing, as distinct from the rate of failure among those who appear).

As previously reported, in the third round of CPAT testing for Exam 7001 candidates (“Round 3”), Black candidates achieved a higher pass rate than white or Hispanic candidates overall, and the gap in overall pass rates between white and Hispanic candidates was smaller

¹ The Candidate Physical Ability Test, administered by the Department of Citywide Administrative Services (“DCAS”)

² Medical screening administered by the FDNY’s Bureau of Health Services (“BHS”)

than in previous rounds. The City attributed the improved outcomes to its outreach efforts, and had stated its hope to replicate or surpass those results in the next round (“Round 4”). But for Round 4, the Monitor’s analysis of data provided by the City showed statistically significant disparities adverse to both Black and Hispanic candidates in pass rates among candidates who appeared for testing.

Part II also discusses the City’s proposal for the next round of CPAT testing (“Round 5”), which will be the final round of CPAT for Exam 7001. Training for Round 5 candidates began on February 12, 2024, and the City proposes to begin orientation for the new group of candidates on April 15, 2024, with CPAT practice and testing to begin in May.³ The City proposes to call the approximately 2,000 candidates in the 96 score band for testing. Candidates who pass the CPAT in the new round will undergo further processing to fill the final Fire Academy class from the Exam 7001 hiring list, to be appointed shortly before the list expires in February 2025.

At the January 11, 2024 status conference, the City stated that it intends to make only “minor changes” in its process for Round 5 compared to Round 4, and that it plans to provide the Monitor and the other Parties with reports on candidate processing, communications, and attrition mitigation programs on the same terms agreed for Round 4. In light of the persistent disparities in CPAT outcomes adverse to non-traditional candidates (cumulatively for all four rounds of Exam 7001 CPAT testing to date and in Round 4 separately), and given that many Black and Hispanic candidates in Round 4 appeared for testing without sufficient training,⁴ the

³ Candidates have three chances to pass the CPAT – two “practice” tests and a final test.

⁴ Based on data reported by the City, 356 Black candidates and 468 Hispanic candidates attended at least one CPAT practice session or the final test in Round 4, and many fewer candidates (231 Black candidates and 310 Hispanic candidates) attended three or more training sessions – the number of sessions that has historically been associated with pass rates for non-traditional candidates comparable to the rates for

Monitor has encouraged the City to ensure that its attrition mitigation efforts for Round 5 are at least equivalent to those for Round 4, and has continued to encourage the City to analyze which measures have been effective and use findings to tailor candidate outreach and support. The Monitor has also suggested that the City look for additional measures that could enhance engagement with Black and Hispanic candidates and improve the rates at which they attend and pass the CPAT. The Monitor has asked the City for additional details regarding its plans and met with the City and the other Parties to discuss them on February 7, 2024. In particular, the Monitor has expressed concerns regarding the City's plans to offer fewer CPAT training sessions each week (compared to Rounds 3 and 4) during two of the five months scheduled for training, and the Monitor has asked the City to explain its belief that the reduced schedule will not lower training attendance, and thus potentially diminish rates of qualification, for Black and Hispanic candidates. The City provided some additional background regarding its decision making in the February 7 virtual meeting with the Monitor and the Parties. The Monitor expects to pursue further inquiries and make further recommendations regarding the City's plans. The Monitor also plans to follow training attendance data closely as CPAT training proceeds.

Part II also provides updates on the City's efforts to engage with and support candidates who have passed the CPAT and have proceeded or are waiting to proceed to the subsequent steps of the hiring process. These efforts include the City's most recent plans for communications with post-CPAT candidates to encourage them to remain fit and committed to the hiring process; the Fitness Awareness Program ("FAP"); and Outreach Coordinator activities for the Office of Recruitment and Retention ("ORR"). Since the earliest stages of CPAT testing and candidate

white candidates. This persistent trend highlights the continuing need for intensive outreach and for more accessible CPAT training facilities, which the City has planned to establish, as discussed below.

processing for Exam 7001, the Monitor has continued to urge the City to try to minimize attrition by tailoring communications to the different needs of differently situated groups of candidates who have passed the CPAT and who have different wait times before being called for active post-CPAT processing – as candidates with different wait times need different information and guidance at different times to remain engaged and prepared for the screening process. *See, e.g.*, Monitor’s Twenty-Eighth Periodic Report (Dkt. # 1932) at 18-19 (dated September 20, 2019). Responding to these longstanding recommendations, the City’s most recent plans, which cover plans to communicate with candidates who will be processed in the last year of the Exam 7001 list (out of a total of six years that the list has been in effect), include some messaging tailored to candidates projected to be appointed (if successful) to the spring and fall 2024 Academy classes. The City has also begun posting processing updates on the candidate portal, showing the list number ranges projected to be processed for the 2024 Fire Academy classes, as the Monitor had also recommended for several years.

Part II also discusses the City’s recruitment campaign for the next entry-level firefighter exam, Exam 4044. The City has tentatively advised that the application period will be July through August 2024,⁵ and that the exam will be administered in November and December 2024.

As noted in previous reports, the City’s approach to the present recruitment campaign, as outlined in a campaign “blueprint” and other documents, was to begin by emphasizing events and engagements that after-action analyses of the Exam 7001 campaign identified as garnering high numbers and percentages of Black and Hispanic test takers with reachable exam scores. As previously reported, the City’s planned approach was to adjust the mix of events based on

⁵ The City reports that the timing of the application period has not been finalized but that it will take place between late June and late September.

ongoing data from the current campaign, as well as to continue to direct outreach to candidates whose information is in the FDNY recruitment unit's database because they submitted expressions of interest ("EOIs") before the current campaign.

In September 2023, the Monitor and the Parties agreed to a schedule pursuant to which the City produces post-monthly reports of recruitment data two weeks after the end of each campaign month, and the Monitor and Parties meet to discuss these post-monthly reports within a week of receipt. The City has largely adhered to this schedule, with occasional minor delays. The Monitor's expert works with the data provided each month by the City to analyze the relative success of events and identify trends and potential adjustments. These reports have provided the context for the post-monthly report calls, including the most recent call on January 18. As of the end of December, the City is continuing to collect a higher number and percentage of Black EOIs (51%) and a lower number and percentage of Hispanic EOIs (29%) than it projected in the blueprint (42% Black and 37% Hispanic). The City has made adjustments to the mix of events that are intended to draw greater Hispanic participation, and FDNY recruitment staff believe the Hispanic percentage will increase going forward. The City is collecting a lower number of EOIs in this recruitment campaign than it did at this stage of the Exam 7001 recruitment campaign. This outcome was projected by the City in the blueprint and reflects its strategy, based on analyses of the Exam 7001 campaign, to gather fewer EOIs overall than it did during the Exam 7001 campaign, with a greater emphasis on engaging legacy EOIs. Further top-line takeaways are noted in Part II. The next post-monthly report from the City (reporting January campaign data) was due February 14, and the City stated on February 15 that it will be produced shortly. The Monitor's expert will circulate an analysis of the post-monthly data as soon as possible thereafter, and it will be discussed on February 22.

Given that the City's chosen recruitment strategy involves making adjustments based on EOI collection outcomes from recruitment events, the Court has indicated its concern that ORR maintain sufficient staff to assure that the FDNY's data entry to track EOIs keeps pace with the rate of EOIs being completed. The City's staffing has resulted in some reporting lags, but the City has stated that it is focused on this issue, and the Monitor continues to request and has received frequent updates about such staffing. On November 9, the Monitor learned that Assistant Commissioner Nafeesah Noonan had been promoted and will now have additional responsibilities outside of ORR. The City indicated that it was considering finding another director for recruitment but stated that there would be no oversight gap in recruitment.⁶

Symphony Talent, the vendor responsible for the advertising and digital marketing component of the campaign, gave a preliminary presentation to the Monitor and the Parties on November 20, 2023 and a presentation of its initial thoughts regarding overall campaign branding and messaging strategies on December 22. These are described in more detail in Part II. The City has said it plans to have Symphony Talent make regular presentations during the monthly scheduled discussions. The Monitor has asked the City for an opportunity to discuss the types of content the City expects Symphony Talent to include in the presentations, and the City has said it will circulate dates for a meeting soon, to discuss this and other issues relating to Symphony Talent's work.

Part II also reports on initiatives developed by the Working Group established pursuant to the Disparate Treatment Settlement, including the inaugural class of the Fire Cadet program.

⁶ In its February 12, 2024 comments on a draft of this report, the City advised that newly appointed Deputy Commissioner Barbara Dannenberg, who formerly served as Deputy Commissioner at DCAS and is familiar with the FDNY hiring process, is also involved in strategy, management and reporting to the Monitor.

Part III of the report summarizes recent developments relating to the FDNY's EEO messaging, training, compliance, and investigations. These include initiatives that the City has undertaken following completion of the analysis of the Department's 2019 workplace climate survey, from which some findings were shared with the FDNY workforce in a statement by the Fire Commissioner in June 2023. The Monitor had asked the City to develop a plan to communicate survey findings to the participants in conjunction with the survey analysis, and the Monitor provided sample communications; but the City said it could not plan for messaging until the survey analysis was complete and the findings known. Since the survey analysis was completed, the Monitor has urged the City to continue communicating with FDNY managers and survey participants about the findings and plans to address them.

Following up on the Commissioner's June 2023 message, staff chiefs and Division commanders visited each fire house in person to discuss survey findings with FDNY members, completing this effort in December 2023.⁷ The Monitor and other Parties, as well as this Court, have encouraged the City to build on this effort by developing and issuing messaging to address specific issues identified in the survey, by taking steps to address the negative perceptions and experiences that it identified, and by providing management training informed by survey findings.

Since the last report, the City has continued work on the leadership training program for all FDNY managers (including Fire, EMS and civilian) that it has presented as a "critically important" part of its plan to address issues of workplace climate. When it was first described to the Monitor in June 2023, the City planned to launch the program in the first quarter of 2024. The City has held a series of meetings with stakeholders and the Monitor's experts to discuss key

⁷ The program included several visits to each firehouse to cover multiple tours of duty.

themes and messages, and it plans to turn to the task of creating detailed training content when a vendor has been engaged. But vendor selection has been delayed, and at the January 11, 2024 conference, the City announced that the projected launch date for the training had been postponed, such that an initial pilot training sessions are now planned for the fall of 2024, and training for all supervisors will not take place until the first quarter of 2025.

The long delay in the leadership training project is very concerning. As the City's own 2013 EEO Report recognized, as the Monitor has noted in longstanding recommendations, and as the climate survey confirmed, effective leadership by company officers is critical in establishing and maintaining an inclusive and professional workplace climate. Until they receive the planned training in managing a diverse workplace, many officers will be left insufficiently equipped to deal with the serious issues of incivility, harassment, and workplace conflict that the climate survey found, and it is essential for the City to complete work on the project without further delays. The City has advised that it is committed to implementing concrete interim steps to provide officers with much needed guidance and assure all FDNY members that issues of workplace climate are being addressed, and the Monitor plans to work with the City to explore ways of expediting work on the leadership development program and providing officers with some essential guidance and resources while work on the program continues. At the January 11, 2024 status conference, the Court re-emphasized that the City must make the necessary resources available for the project.

Part III also discusses recent developments related to the messaging plan that the City filed with the Court on November 15, 2023, setting forth the FDNY's plans to communicate on topics related to EEO. The Monitor had requested that the City create such a plan for years, but the City stated that it could not do so until it had completed analysis of the climate survey. The

one-page plan lists ten general topics for messaging that the FDNY plans to communicate (with months in which each message will be delivered) over approximately the next two years, along with general categories of personnel who will deliver the messages. The Parties and the Monitor met to discuss the plan on January 2, 2024, and the Monitor, Plaintiffs-Intervenors, and the United States offered some suggestions based on the messaging topics. The City circulated draft materials for the first round of messaging, regarding the role of the EEO Office, on January 11, 2024, and the Monitor provided comments on the drafts on February 15. The City has agreed to circulate drafts of the materials for each round of messaging on a rolling basis as soon as they are completed for later rounds. And the Monitor and the other Parties expect to offer detailed comments on each messaging topic as drafts are provided.

In other areas relating to the FDNY's EEO function, Part III summarizes the Monitor's continuing efforts to confirm that the EEO metric in officer performance evaluations, which was implemented in 2018, reflects EEO performance in practice, and that the EEO Office provides input for the rating process in all appropriate cases (including input based on information gathered in the investigation of EEO complaints). Part III also recounts recent activities relating to a set of nine initiatives that the Chief Diversity and Inclusion Officer ("CDIO") described in a June 1, 2023 report to the Commissioner, which he confirmed the Commissioner had approved. The Monitor has continued to seek updates on these initiatives, most of which remain in the research and planning stages.

Part III also provides an update on the current level of EEO Office staffing and the Monitor's ongoing evaluation of the FDNY's EEO investigative practices. The current EEO Office staff of five investigative attorneys remains three short of the eight investigators handling

cases in mid-2019, and the majority of cases requiring substantial investigation continue to exceed the presumptive 90-day limit provided by City EEO policy.

Part IV reports on developments related to the Medical Exam. In its December 14, 2023 Attrition Metrics Report, the City reported that the Medical Exam continues to produce statistically significant disparities adverse to Black and Hispanic candidates in both the physical portion of medical testing and the Medical Exam overall.

The Monitor stated in the last periodic report that the station-by-station results of the physical portion of the Medical Exam would be discussed in this periodic report, after the City had produced its semi-yearly Bureau of Health Services (“BHS”) Attrition Metrics report, which was due on January 14. The City notified the Monitor on January 30, however, that the report was delayed because the City was doing “a deeper dive” into areas of potential impact.⁸ The Monitor cannot, therefore, report at this time on the possible combination of medical steps that may be driving the disparate impact and pending⁹ rates reflected in the overall Attrition Metrics Report produced on December 14. Nevertheless, pursuant to the list extension conditions approved by the Court in its June 17, 2022 Order, the City has been providing monthly updates on the four specific disqualification reasons that have historically been most associated with disparate impact in the Medical Exam. The data in the most recent monthly report, provided by

⁸ The City produced the December report on February 12, 2024, saying it had discovered errors in its previous reporting of medical data. The City has not stated how many previous reports were incorrect. According to the City, the adverse impact it previously reported with respect to certain medical sub-steps was due to its misclassification of data, and those steps do not, in fact, show adverse impact. The Monitor's experts have not had a chance to examine and discuss the new report and the reasons for the newly discovered errors, and the Monitor will report further after those discussions have taken place.

⁹ Candidates in the Medical Exam are considered “pending” if they have appeared for their initial visit at BHS and have not attrited (either voluntarily or by disqualification) and have not declined or withdrawn. Candidates can be pending if, for example, they did not qualify for the Stairmill or Weight sub-steps on their first attempt and are able to return for further attempts.

the City on January 19, 2023, indicated that there was disparate impact against Black and Hispanic candidates in the Pulmonary Function Test (“PFT”) and against Black candidates in the Stairmill and Weight tests.¹⁰

The City frequently highlights the fact that relatively few Black and Hispanic candidates have been disqualified by the Medical Exam. However, as described in more detail in Part IV, only 71.4% of the Black and 78.7% of the Hispanic candidates who have made it to the Medical Exam step (*i.e.* have been scheduled for their first medical appointment) have emerged as qualified. The remainder of the approximately 246 Black and Hispanic candidates – all of whom were successfully recruited to take the exam, achieved AFA scores of 97 and above, waited a long time (sometimes many years) to take the CPAT, passed it, and are very close to the end of the qualification process – are part of the increasingly high percentages of Black and Hispanic candidates who have either voluntarily attrited from or are pending at the Medical Exam. Although the City cannot get back the Black and Hispanic candidates who have already voluntarily attrited at the Medical Exam stage, it is urgent that it help the pending candidates because the time left in which they can make it through to the Academy is quickly slipping away. The Medical Exam should only serve as a barrier to hire for the candidates in this group who are not fit to be firefighters because of a medical issue. Getting Black and Hispanic candidates who have not been disqualified from pending to qualified status is perhaps the most direct way to increase the number of Black and Hispanic hires from the Exam 7001 list.

Based on what is known at this time, some disparities, such as the disparate impact in PFT testing, may not be obviously susceptible to improvement. But issues in other areas related

¹⁰ The City stated on February 12, in connection with the report provided on that date, that only the PFT currently shows disparate impact. The Monitor will review and analyze the data in consultation with the Monitor’s experts.

to the Medical Exam, such as voluntary attrition and pending status connected to the Weight and Stairmill tests, remain at least partly remediable and deserve the City's urgent attention. The City must continue to urge Black and Hispanic candidates to take the Medical Exam. It must provide clear information on weight requirements and help these candidates become familiar with and use medical and fitness resources and guidance on weight loss strategies. The City already provides multiple opportunities for candidates to pass the weight test. It must also continue to encourage Black and Hispanic candidates to prepare and appear for initial and follow-up appointments and give them all possible support throughout so that they can pass the Stairmill test and/or attain a qualifying weight.

Part V reports on discussions of the FDNY's character review process and reforms intended to address the disparate impact produced by this step in the hiring process. As previously reported, in December 2022, the City implemented several changes in the criteria governing referral to the PRB. The Monitor approved these modifications on the condition that the City provide additional analyses showing the effect the changes would have had on previous referrals to the PRB and candidate outcomes. The Monitor provided the City with a detailed request for these analyses on April 12, 2023. Before the last periodic report, the City advised that a report summarizing results of these analyses was nearly complete, but it has not yet provided the requested analyses.

Part VI discusses the City's development of the next computer-based test ("CBT"), which the City currently plans to administer in November and December 2024. Talogy (successor to the vendor that developed Exams 2000 and 7001) will develop, administer, and analyze the results of the exam.

Talogy will use forms previously developed for Exams 2000 and 7001 for the upcoming exam, making sufficient alterations to guard against any exposure the forms had during prior administrations. The first step is for Talogy to confirm the ongoing validity of its previous job analyses. It had originally projected that this would be completed by November 2023, but it has not yet been done.¹¹ Experts for the Monitor and the Parties are meeting with Talogy on a regular basis to provide guidance and input, as they did during the development of Exam 7001.

The City has increased the number of bonus points New York City residents will receive on exam scores from five points to ten points. (The City has already done this for the NYPD exam.) The Monitor has asked the City for its analysis of the effect the increase in points is projected to have on the racial/ethnic mix of reachable candidates from the next exam. The City has said that it will perform and circulate an analysis by mid-February.

Part VII describes a range of additional issues addressed by the Monitor and the Parties during the period covered by this report.

II. Recruitment, Candidate Processing, and Attrition Mitigation

A. Candidate Processing

1. Trends in Candidate Processing to Date

a) The City's December 14, 2023 Attrition Report

The City's most recent updated Attrition Metrics Report (dated December 14, 2023), covers all candidate processing for Exam 7001 through the appointment of the November 6, 2023 Academy class, including Round 4 of CPAT testing, and it continues to show statistically significant disparities adverse to Black and Hispanic candidates in the CPAT, in the Medical

¹¹ The City has not yet finalized its contract with Talogy, but the City has assured the Monitor that it is addressing this issue and that it should not affect the overall timeline.

Exam, and in the referral phase of character review (referrals to the PRB).¹² The report also shows a statistically significant disparity adverse to Black candidates in CPAT voluntary attrition.

b) CPAT Round 4

On December 28, 2023, the City provided the Monitor with final updated data showing attendance and outcomes for Round 4 CPAT testing.¹³ Based on this data, the Monitor performed updated calculations showing the rates of attendance and outcomes for key demographic groups in Round 4 – set forth in the table below.

CPAT Round 4 – Revised Figures									
	Attended (any practice or final) ¹⁴	Attended (passed + failed final)	Passed	Total	Overall Pass Rate	Attendee Pass Rate (any practice or final)	Attendee Pass Rate (passed + failed final)	Attendance Rate (any practice or final)	Attendance Rate (passed + failed final)
Black	356	325	299	974	30.7%	84.0%	92.0%	36.6%	33.4%
Hispanic	468	435	399	1,201	33.2%	85.3%	91.7%	39.0%	36.2%
White	800	756	719	2,184	32.9%	89.9%	95.1%	36.6%	34.6%

The revised statistics do not differ materially from those based on the City’s September 18, 2023 data. *See* Monitor’s Forty-First Periodic Report at 12-13. Most notably, the figures show statistically significant disparities adverse to both Black and Hispanic candidates compared to white candidates in attendee pass rates (using either definition of attendance). The overall

¹² An additional analysis performed by the Monitor using the City’s figures shows statistically significant disparities adverse to Black candidates in rates of qualification among candidates who received any final decision from the character review process (either a decision by the CID not to refer them to the PRB or a final decision from the PRB, following referral, whether they were qualified for character).

¹³ The City provided a data set including “DCAS’s Round 4 results for all candidates” and simultaneously provided a list of a small number of promotional candidates who appeared in the DCAS data set but should not be included in Exam 7001 analyses. The Monitor’s analysis excludes the promotional candidates.

¹⁴ This table shows two different figures for attendance – one figure that counts as “attended” all candidates who attended at least one practice session or the final test, the other that counts as “attended” only those candidates who either passed the test in a practice session or attended the final.

pass rate for Black candidates (the pass rate for all candidates invited to testing, both those who attended testing and those who did not) had exceeded the overall rate for white candidates in Round 3,¹⁵ but it declined in Round 4 and dipped below the rate for whites, although the gap in overall pass rates in Round 4 was not statistically significant. The overall pass rate for Hispanic candidates surpassed the rate for white candidates in Round 4.

c) November 6, 2023 Academy Class

Using figures provide by the City for appointed candidates in the last two Attrition Metrics Reports, the Monitor calculated the following statistics showing the composition of the November 6, 2023 class:

November 6, 2023 Academy Class	
Asian	11 (3.5%)
Black	51 (16.2%)
Hispanic	98 (28.7%)
Native American	4 (1.3%)
White	150 (47.8%)
Total	314

2. Overall Firefighter Demographics

On February 12, 2024, the City provided the following figures showing the current representation of Black, Hispanic, and white firefighters in the FDNY firefighter force, which continue to reflect increasing diversity in the firefighter force:

Firefighter Force (as of 1/4/2024)	
Black	947 (11.5%)
Hispanic	1,523 (18.5%)
White	5,400 (65.7%)
Total	8,212

¹⁵ As calculated by the Monitor, based on figures provided by the City, the overall pass rates in Round 3 (among all candidates invited to CPAT) were 34.3% for Black candidates, 33.3% for Hispanic candidates, and 33.9% for white candidates. Monitor's Fortieth Periodic Report at 13-14.

B. Compliance with the Home-Division Requirement of the Disparate Treatment Settlement

On January 5, 2024, the City provided the Monitor with data showing probationary firefighter assignments for graduates from the Academy class that graduated on August 29, 2023. Based on the Monitor's review, the data set confirms the City's previous representations (discussed in detail in the Monitor's Forty-First Periodic Report at 16) that the assignments complied with Paragraph 1(d) of the Disparate Treatment Settlement, which requires the City to give "New York City residents who graduate from the Fire Academy first priority for placement into a fire company within the Division in which they live, to the extent reasonable, practicable, and consistent with operational needs."

C. Attrition Mitigation and Candidate Processing

1. City Proposal for CPAT Round 5

On January 4, 2024, the City circulated a proposed schedule for the final round of CPAT testing for Exam 7001 candidates (Round 5). The City proposes to call one score band for testing – the 96 band, which includes approximately 2,000 candidates (fewer than half the approximately 4,600 candidates who were called for Round 4). According to the City's proposed schedule, orientation will begin April 15; practice and testing practice will run from May 14 to July 15; and training, which began on February 12, will be offered through the end of testing on July 15 (approximately the same training period as the City offered for Round 4). The schedule is intended to produce an additional group of post-CPAT candidates that the City will need to fill the last Academy class for the Exam 7001 list – which will be appointed before the list expires in February of 2025.

At the January 11, 2024 status conference, the City stated that it intended to make only "minor changes" in its process for Round 5 compared to Round 4; and in its January 4 proposal,

the City also confirmed that it plans to provide reports on candidate communications, CPAT training attendance, CPAT practice and testing, candidate outreach, and CID staffing and workloads on the same terms that applied during Round 4. *See* Monitor’s Fortieth Periodic Report (Dkt. # 2195) at 18-19. In a series of follow-up communications and discussions (including a January 16 message to the Parties and a February 7 virtual meeting), the Monitor has sought further details regarding the City’s plans for training, outreach, and candidate communications for Round 5.

In light of ongoing disparities in CPAT results adverse to Black and Hispanic candidates, the Monitor believes a net reduction in training or candidate engagement compared to Rounds 3 and 4 would potentially be inconsistent with the City’s obligations to refrain from using hiring tests that have unlawful disparate impact, and potentially with its obligations under paragraph 19 of the MRO to “take all steps necessary to eliminate all policies and procedures that are not job related or required by business necessity and either have a disparate impact on black and Hispanic firefighter candidates or perpetuate the effects of said disparate impact.” Accordingly, the Monitor has urged the City not to reduce its efforts for Round 5 without a strong basis to believe that doing so will not worsen disparities adverse to Black and Hispanic candidates, and to look for opportunities to do more to communicate the importance of multiple training sessions for success on the CPAT.

On January 12, 2024, the City circulated its updated communication plans for Round 5 CPAT candidates. The plan for targeted candidates (Black, Hispanic, Asian, and women candidates) is nearly identical to the schedule of communications for Round 4 – including email and text notification regarding CPAT orientation, training, and testing; phone outreach regarding the importance of CPAT training; email and text reminders regarding CPAT practice and testing

appointments; and texts and phone calls to candidates who fail or fail to attend CPAT practice sessions. The plans also include messages advising candidates that they may appear for CPAT training without appointments.

However, although the January 12 plans include information on rescheduling CPAT practice and testing sessions (providing the DCAS number for candidates to call and the times of day to call), they do not appear to include clear instructions for the flexible rescheduling option that was available in Round 4 and a portion of Round 3 – allowing candidates to leave voice messages choosing new times for CPAT practice and testing sessions and to appear for their chosen rescheduled sessions without receiving affirmative confirmations from DCAS. The Monitor has asked the City to confirm that the option will be available in Round 5 and when it will be offered (as this was not apparent from the materials received January 12), and has urged the City to communicate the rescheduling option early and often by all available channels – including email, text, and DCAS’s outgoing voice message.

The January 12 communication plans also include a series of text messages (scheduled to begin in February 2024) with links to fitness training videos demonstrating exercises that candidates can use independently to build fitness in key areas for the CPAT. The Monitor has encouraged the City to begin these communications as soon as possible and to ensure that the early communications in the series include links and/or reminders directing candidates to the full collection of fitness guidance and resources available via the JoinFDNY website. Although the Monitor repeatedly encouraged the City to engage more extensively with candidates in lower score bands before calling them for CPAT, these candidates have received very limited messaging intended to support their motivation and help them build and maintain fitness over the years in which they have been waiting to be called. *See, e.g.*, Monitor’s Thirty-Eighth Periodic

Report (Dkt. # 2139) at 47-48. It is now critical for the City to help them take advantage of every available resource that could help them pass the CPAT and navigate the hiring process successfully.

The City's January 4, 2024 proposal included a CPAT training schedule that appeared substantially similar to the schedule for Round 4 – with training on four evenings each week and morning and afternoon sessions on Saturday and Sunday. But an updated schedule circulated to the Monitor and the other Parties on February 1 provides for considerably fewer training sessions than Round 4 – with no training on Sundays, and with a reduced training schedule (two evenings each week rather than four) during two of the five months of training. The Monitor asked the City to provide its rationale for reducing the schedule and detailed evidence supporting its contention that limiting the number of sessions will not reduce training attendance among Black and Hispanic candidates; and the City provided some additional information regarding its plans for training in the February 7 virtual meeting with the Monitor and the other Parties – reporting that some training sessions (including Sunday sessions and late evening weekday sessions) had been thinly attended in previous CPAT rounds. The Monitor intends to follow reports on CPAT training attendance closely as training proceeds – to identify any trends suggesting that the reduced schedule is associated with lower rates of attendance in key groups, and to make appropriate recommendations.

In response to Monitor inquiries, the City has confirmed that other training resources in addition to CPAT training (including stairmill training sessions and access to stairmills in City recreation centers) will continue to be available on the same terms the City offered in Round 4. It has also confirmed that it will continue to offer shuttle service to the CPAT training site on Randall's Island from FDNY Headquarters in Brooklyn and from an upper Manhattan location.

As noted above and in the Monitor's previous reports, despite the City's messaging efforts to persuade candidates to attend multiple sessions of CPAT training in previous CPAT rounds, the City continues to offer training at only one location and selected times, the Mentor program has not contacted a number of candidates who were assigned Mentors, and many Black and Hispanic candidates have continued to appear for testing without taking three or more training sessions – the number of sessions that has historically been associated with the highest pass rates, especially for non-traditional candidates.¹⁶ The continuing tendency of many candidates to take the CPAT without sufficient preparation suggests that travel to Randall's Island is a factor preventing candidates from taking the necessary training. For the future, the City previously reported that it has identified a new location to be developed as a training site, but that the new site would not be ready until after the Exam 7001 hiring list expired. Although the new site will not be ready for the last round of Exam 7001 CPAT training (which is about to begin), the City must complete the remaining steps for establishing the new site as soon as possible and ensure that it is ready, at a minimum, before the first round of CPAT training for candidates from the next open competitive hiring list.

In connection with plans for CPAT Round 5, the Monitor has also asked the City to specify how it intends to ensure that that FDNY Mentors maintain contact with their mentees, encourage them to attend CPAT training, and provide them with the guidance they need to negotiate the screening process. On December 20, 2023, responding to a longstanding Monitor request, the City sent the Monitor a report showing, among other things, the number of Mentor

¹⁶ As discussed above, figures reported by the City on December 28, 2023 show that 356 Black candidates and 468 Hispanic candidates attended at least one CPAT practice session or the final test in Round 4. Based on data supplied by the City on January 31, 2024, many fewer candidates (231 Black candidates and 310 Hispanic candidates) attended three or more training sessions.

contacts with mentees in each demographic group between August and December 2023. The report indicated that there had been no attempt to contact some mentees within the relevant time frame (*e.g.*, for 81 out of the 519 Black mentees, and for 98 out of the 908 white mentees). The Monitor expressed concerns regarding these apparent failures in candidate outreach in a January 4, 2024 virtual meeting with the Parties, and the City indicated that some of the “no attempt” numbers in the report may be attributable to Mentors who failed to comply with reporting requirements. But even if that is the case, the numbers are concerning. In response to Monitor questions about how the City plans to enforce the requirements, supervise Mentors more closely, and remedy Mentors’ failures to reach out to their assigned mentees, the City has advised that ORR management and Senior Mentors are reviewing reports and follow up at least bi-weekly, and it has described steps that Senior Mentors take when reports indicate either that Mentors have not contacted mentees or that mentees have not responded. In such cases, Senior Mentors reach out to the Mentor or mentee and seek to confirm whether they are still active in the program; and where Mentors are on medical leave or vacation, the Senior Mentors maintain contact with their mentees until the regular Mentor returns. When a Mentor is permanently removed from the program (*e.g.*, because of retirement or extended leave), mentees are reassigned using the automated system. The City reports that while that process can be immediate, it can also take up to 30 days. Given the key role that Mentors are expected to play in encouraging candidates to attend CPAT training and fulfill post-CPAT screening requirements, the Monitor urges the City to identify Mentors’ failures to make contact mentees promptly, expedite Mentor-mentee reassignments where needed, and ensure that Mentors maintain frequent contact with mentees.

Finally, the Monitor has also asked the City to specify the analyses it is conducting or plans to conduct regarding Round 4 data (including CPAT outcomes and any correlations between outcomes and attrition mitigation initiatives) and to state when the City expects to complete them. The Monitor performed a number of such analyses with data from Round 3, and while Round 4 was in progress, the Monitor and the other Parties urged the City itself to conduct similar analyses of the extent to which attrition mitigation programs correlate to successful outcomes. While such analyses should have been completed well in advance of Round 5, it remains important for the City to complete the analyses in time for them to inform its attrition mitigation efforts for the new Round of training and testing, even though now any changes based on the analyses will have to be implemented after Round 5 candidates have been called up.

Relatedly, since the last periodic report, the Monitor also continued to pursue a request (issued on September 27, 2023, shortly after the conclusion of Round 4 CPAT testing) that the City provide individual candidate data from Round 4 showing training attendance (including the number of sessions attended), portal usage, and Mentor program enrollment for all Round 4 candidates, with data that will permit the Monitor to combine the training/portal/Mentor data with CPAT practice and testing data – so that the Monitor can analyze correlations between participation in the attrition mitigation programs and candidate outcomes. The City provided a data set in response to the Monitor’s request on January 31, 2024. The Monitor has begun to work with the data and has posed some follow-up questions to the City.

Following discussions between the Monitor, DCAS, and the FDNY, the City now has the capability to scan the “scantron” forms used to track CPAT training outcomes on different components of the CPAT, rather than entering data from the forms manually. On January 12, 2024, the City provided the Monitor with a set of data scanned into a database from “scantron”

records for CPAT training from Round 3 and 4. The Monitor is analyzing the data to identify any patterns in training outcomes that might indicate points of emphasis in training for Round 5.

2. Post-CPAT Attrition Mitigation

On December 20, 2023, the City reported the current demographic breakdown of the approximately 1,400 candidates who have passed the CPAT and remain eligible for appointment to the next two Fire Academy classes (in the spring and fall of 2024). A total of 775 candidates are in active processing for the spring 2024 class, in demographic percentages as follows:

ELIGIBLE FOR SPRING 2024 CLASS (Candidates with list numbers of 9,187 or below)		
ETHNICITY	COUNT	%
Asian	19	2.45%
Black	158	20.39%
Hispanic	213	27.48%
Native American	3	0.39%
White	382	49.29%
Grand Total	775	100.00%

A further 648 candidates will enter processing later for the fall 2024 class, with the following breakdown:

ELIGIBLE FOR FALL 2024 CLASS (Candidates with list numbers between 9,188 and 11,103)		
ETHNICITY	COUNT	%
Asian	21	3.24%
Black	133	20.52%
Hispanic	173	26.70%
Native American	2	0.31%
White	319	49.23%
Grand Total	648	100.00%

Once Round 5 of CPAT testing is completed, assuming rates of attrition comparable to

Rounds 3 and 4, several hundred additional candidates will join the post-CPAT pool of candidates and will be considered for appointment to the final Exam 7001 Academy class in early 2025.

The City must ensure that Black and Hispanic candidates remain committed to the hiring process, receive the guidance they need to navigate its administrative requirements, and maintain their fitness for the Medical Exam. The Monitor has continued to track and make recommendations regarding the City's attrition mitigation efforts for the post-CPAT groups of candidates.

Training Programs – The City has continued to offer post-CPAT candidates a stairmill-focused fitness training program as well as its Fitness Awareness Program (“FAP”),¹⁷ which provides fitness assessments, training, and guidance. The FAP resumed on January 16, 2024 following a period of inactivity since October, and the City has begun providing reports on registration and attendance, which the Monitor will continue to analyze. The City has confirmed the program is open to all candidates who have passed the CPAT and remain eligible for appointment to the Fire Academy. As discussed in the Monitor's previous periodic report, the City's October 4, 2023 report on FAP attendance (covering attendance from June through October 4, 2023), showed that 20.5% of Black candidates invited to the program had attended, along with 18.7% of the Hispanic candidates and 12.7% of the white candidates invited. The Monitor has continued to encourage the City to promote the program intensively, given its association with candidates' success in gaining appointment to the Fire Academy.

The City's most recent report on stairmill training (covering cumulative figures from

¹⁷ The FAP is a multi-session program of fitness training for post-CPAT candidates, described in detail in the Monitor's previous reports. *See* Monitor's Thirty-Second Periodic Report (Dkt. # 2004) at 18-19; Monitor's Thirty-Third Periodic Report (Dkt. # 2029) at 16-17.

October 2022 through January 16, 2024, for both pre- and post-CPAT candidates) continues to reflect low rates of participation for all demographic groups, with attendance rates below 10% among candidates invited to training.

Candidate Communications – The City provided ORR’s most recent updated communication plans on January 12, 2023 – including its current plan for communications with candidates who have already passed the CPAT. As noted in the Monitor’s recent periodic reports, previous plans for communications with post-CPAT candidates provided little or no messaging specifically timed or tailored for candidates who will be appointed (if at all) to classes in the fall of 2024 or spring of 2025. The City’s most recent plan provides some additional messaging for candidates expected to be appointed to the fall 2024 class and appears to reflect an effort to tailor messaging to each of the groups of candidates projected to enter processing and (if appointed) Academy classes at different times. However, given the City’s plan to fill a class in early 2025 from the Exam 7001 list, it will also need to provide an updated plan accounting for messaging to candidates expected to be appointed to that class (who will likely begin active post-CPAT processing immediately or shortly after passing the CPAT). The Monitor also continues to recommend that additional fitness-related messaging and guidance regarding the administrative requirements connected to CID intake be provided as early as possible in the sequences of communications targeting candidates for the spring and fall 2024 classes.

In response to longstanding Monitor recommendations, the City recently began posting processing updates on the candidate portal, showing the list number ranges projected to be processed for the 2024 Academy classes. The City provided a screenshot of the processing update to the Monitor and the Parties on November 13, 2023.

Reports on Individual Communications – Since the last periodic report, in addition to updated communication plans, the City has also continued to provide reports on individual text and phone communications with candidates, which the Monitor has continued to review. Since the completion of CPAT Round 4, the reports reflect communications with post-CPAT candidates regarding CID intake and the Medical Exam, along with some communications regarding stairmill training and the FAP – with some message categories focused on targeted candidates.

Mentor Program – On December 20, 2023, the City provided an updated report showing the following demographic breakdown of ORR’s team of candidate Mentors:

RACE	COUNT
Alaskan Native American	1 (0.2%)
Asian/Pacific Islander	25 (4.1%)
Black	139 (22.5%)
Hispanic	103 (16.4%)
White	344 (55.8%)
Blank	5 (0.8%)
Grand Total	617

Also on December 20, 2023, the City provided a report on Mentor contacts with a total of 2,161 enrolled mentees during the period since August 19, 2023 – including numbers of contacts, types of contact (*e.g.*, phone, text, face-to-face), and the number of unique mentees contacted in each demographic group. As noted above in Part II.C.1, although the report shows that Mentors have made at least some contact with the majority of mentees in each demographic, it also indicates that in many cases Mentors either have not attempted to make contact or have failed to report doing so, with no attempted contact reported for a higher percentage of the Black mentees than whites. The Monitor has urged the City to take prompt and decisive action to ensure that

Mentors engage with their assigned mentees and adhere to reporting requirements. And the Monitor plans to obtain regular updated reports on Mentor activities going forward.¹⁸ The need to ensure Mentors are establishing and maintaining contact with mentees is particularly pressing given that, in addition to their contacts with post-CPAT candidates, they will be expected to play a key role in supporting Round 5 candidates during CPAT training and testing.

Outreach Coordinators – On December 27, 2023, the City advised that ORR currently has two firefighters serving as full time Outreach Coordinators and a further five firefighters who assist on an overtime basis “as needed.” The City has represented that Coordinators communicate with all post-CPAT candidates at least monthly (and more frequently for those in active processing) and that firefighters working on overtime will assist with these communication efforts. But the level of Coordinator staffing is concerning, given that it is substantially below levels from previous years.¹⁹ Based on the City’s figures for the demographic breakdown of post-CPAT candidates (shown above), the Coordinators currently serve a total of 291 Black candidates and 376 Hispanic candidates.

CID Workload – Following extended delays, on January 5, 2024, the City provided a report on the candidate workload for CID investigators (which it had also agreed to provide as

¹⁸ The City had agreed to provide such reports as part of its plans for Round 4 of CPAT testing. And its Mentor reporting system has been operational since January of 2023 (*see* Monitor’s Fortieth Periodic Report at 34). But its December 20, 2023 report was the first report on Mentor contacts that the Monitor has received.

¹⁹ For example, as discussed in the Monitor’s Thirty-Fifth Periodic Report (Dkt. # 2082) at 24-25, the City’s formula for determining the number of Coordinators needed to serve candidates in active processing (which represented a reduction in Coordinator staffing from a previous formula) provided for two Coordinators for 100-200 Black candidates and a further three Coordinators for 200-300 Hispanic candidates. Currently, with 158 Black and 213 Hispanic candidates in active processing for the spring 2024 class, the City’s formula would call for a team of five full-time Coordinators. *See also* Monitor’s Twenty-Ninth Periodic Report (Dkt. # 1966) at 29-30 (noting that ORR’s pre-pandemic staff included six African-American Coordinators).

part of plans for CPAT Round 4): the City reported that during processing for each class, the number of candidates under review by each investigator fluctuates, with the typical range of candidates to be reviewed by each investigator ranging from 30 to 45. The City advised that currently the average number of candidates reviewed by each investigator is 36.

D. Recruitment Campaign

The City's establishment of a sustainable process for successfully recruiting and retaining Black and Hispanic firefighter candidates is a central goal of the MRO and the Monitorship. *See* MRO ¶¶ 31-36. The Court specifically found that a policy or practice that "fails to adequately recruit black persons to become firefighter candidates serves to maintain and perpetuate the effects of the City's discrimination against black firefighter candidates." Findings of Fact (Dkt. # 741) at 33. As the Court and the Monitor have emphasized from the outset, the City must continue to use data-driven analyses of its recruitment efforts to identify the most productive and cost-effective means of attracting Black and Hispanic candidates likely to achieve reachable scores on the firefighter examination and ultimately be appointed as firefighters. *See, e.g.*, Monitor's Recruitment Report to the Court (Dkt. #1464) at 40-44; Monitor's Fifteenth Periodic Report (Dkt. #1669) at 5 (compiling additional citations).

As reported in the Monitor's Fortieth Periodic Report, the Monitor submitted a report to the Court on July 19, 2023 (the "July 19 Report") (Dkt. # 2191) that included a number of conditions for the Monitor's approval of the commencement of the campaign, as contemplated by Paragraphs 11 and 16 of the MRO. *Id.* at 40-41. The conditions include the following: campaign results, as outlined in the City's campaign "blueprint" and elsewhere, will be promptly reviewed by the City each month and shared with the Monitor and the other Parties for review and input; in the event the City falls short of its target metrics, it will adjust its strategies and resources expeditiously, based on the data it has gathered and analyzed; and the City must

provide a description of the initial campaign strategy, branding approach, and advertising “creative” materials the FDNY plans to use within two weeks of their development with Symphony Talent.²⁰ These areas of activity are discussed below.

1. Campaign Blueprint

As described in the last periodic report, the final draft of the campaign blueprint, circulated by the City on July 6, 2023, included, among other things, a timeline; a general strategy for field events and candidate engagements; projections for events to be held each month; targets for numbers and percentages of diverse EOIs, filers, test-takers, and reachable candidates; data retention plans; an outline of tasks the City expects Symphony Talent to undertake; and plans for monthly meetings with the Monitor and the other Parties to discuss the City’s progress and results.

Timeline – Although the blueprint projected that Symphony Talent would launch its campaign in September 2023, with a March-May 2024 filing period and a July-August 2024 test administration period, the City’s current plan is for Symphony Talent to launch the media campaign in February 2024, beginning with outreach to campaign and legacy EOIs, and continue to ramp up through April 2024, with the application period tentatively set for July and August and test administration in November and December 2024.

²⁰ Other conditions include the City’s agreement to (a) have sufficient resources in place and pre-scheduled meetings with Symphony Talent to evaluate and respond expeditiously to any negative trends that are revealed once the filing period begins; (b) be prepared to adjust its strategies and resources depending on the productivity of various campaign approaches and initiatives, including, if warranted, by adding events to the calendar and by having Symphony Talent make adjustments to its own efforts; and (c) provide the Monitor and the other Parties with weekly reports of the numbers and demographics of exam filers once the filing period opens (tracking separately the numbers and demographics of filers who self-recruited, filers who were legacy EOIs, and filers who submitted EOIs during the campaign).

Strategy – As previously reported, the blueprint describes a general approach of emphasizing events that after-action analyses of the Exam 7001 campaign identified as garnering Black, Hispanic, and women test takers with reachable exam scores, with adjustments to be made to this emphasis, based on new data as it becomes available. The blueprint includes a schedule of the types and number of field events projected to be run each month between the launch of the campaign and the end of the filing period. The blueprint also outlines the City’s hopes for interest from legacy EOIs – candidates who filled out EOIs in the last campaign or between campaigns – who are more diverse than the projected total population of filers.

Targets – As previously reported, the blueprint contains the following targets: 1,090 field events²¹; 33,150 EOIs; EOIs to be 42% Black and 37% Hispanic; filers to be 30% Black and 27% Hispanic (out of an unprojected total number of filers); test-takers to be 28% Black and 27% Hispanic (out of an unprojected total number of test-takers); and the reachable candidate pool to be 21% Black and 27% Hispanic.²²

Monthly Assessments – The blueprint states that the City will provide monthly assessments to gauge its progress against its goals and that the success of the various field events each month – in terms of numbers of EOIs and their demographic percentages – will be measured against the City’s target numbers and percentages, and adjustments will be made to

²¹ The City’s strategy calls for fewer events than it ran in the Exam 7001 recruitment campaign.

²² As previously noted, the City has not projected the total numbers of filers or test-takers because it does not know how many people will file to take the test without having indicated their intention to do so by filing an EOI. In the past, this pool of “self-recruits” has been less diverse than the EOI-filing pool. The success of the campaign will depend not only on the number and percentage of diverse EOIs the City converts to test-takers but also on the number and percentage – as yet unknown and unprojected – of diverse self-recruits who take the test.

increase the frequency of those events (by type and location) and engagements that have performed above the targets and reduce the frequency of those that have underperformed.

2. Reporting and Analysis of Campaign Results

The Monitor and the Parties are following a schedule pursuant to which the City circulates post-monthly data reports two weeks after the end of each campaign month, the Monitor's expert uses the data to conduct analyses of campaign results and trends, and the Monitor and Parties meet to discuss these reports within three weeks of the end of the campaign month. The most recent post-monthly data report was provided by the City on January 12, the Monitor's analysis was circulated on January 17, and the report and analysis were discussed on January 18. The next post-monthly report was to be provided by the City on February 14 (the City has advised that it will be produced shortly) and will be discussed on February 22.

a) Recruitment Events

As previously reported, the City's reports include the date, type, and borough for each event the City has run, and the number of EOIs collected at each, by gender and race/ethnicity. The City produces the data in an electronic format that allows the Monitor's expert to generate a report that shows the relative success of event types, boroughs, and times of day on a monthly basis; trends based on cumulative report data; and comparisons to the Exam 7001 campaign. The Monitor circulates these expert reports along with a list of top takeaways to the Parties, and these have provided the context for the post-monthly report calls.

The topline takeaways from the Monitor's expert's most recent report (dated January 17, 2024, and based on the City's data for December, as reported in the City's January 12 post-monthly report) are as follows:

- The City continues to collect EOIs in numbers roughly consistent with the projections it made in the campaign blueprint, though the number and percentage of Black EOIs continues to be above the blueprint projections, and the number and percentage of

Hispanic EOIs continues to be below the blueprint projections. The City is aware of the lower-than-projected number and percentage of Hispanic EOIs, and it has increased event types and locations where it has seen higher numbers and percentages of Hispanic EOIs. The data for December therefore reflect a continuing, very slight increase in the Hispanic percentage and a continuing, very slight decrease in the Black percentage, as the City pivots toward events that are better for Hispanic recruitment, bringing the percentages marginally closer to the blueprint projections. As previously reported, the City also projects from prior exam data that there will ultimately be a higher rate of engagement from Hispanic EOIs and that the Hispanic conversion rate (meaning those who not only fill out EOIs but also go on to take the test) will be higher than the Black conversion rate.

- The percentages for both Black and Hispanic EOIs are close to what they were for Exam 7001. The overall number of EOIs to date continues to be well below what it was for Exam 7001 at the same point. The numbers of EOIs per event are similar, but there have been fewer events overall than over the same period for Exam 7001. These results were anticipated by the City in the blueprint and reflect its strategy, based on analyses of the Exam 7001 campaign, to gather fewer EOIs overall than it did during the Exam 7001 campaign, with a greater emphasis on engaging legacy EOIs.
- As projected in the blueprint, there were fewer events in December than in any previous month and 44% fewer than in November. There was also an unprojected decrease of 11% in the number of EOIs collected per event in December.
- The City pivoted for the second month in a row to a higher percentage of DMV and Mall events and also pivoted to a higher percentage of FDNY HQ events. Wellness events dropped to zero.
- The City held fewer subway events in December because of what it described as saturation at certain stops (recruiters were encountering the same potential recruits in places where events had previously been held), but it reported its plan to pivot in January to subway stations in neighborhoods with higher concentrations of age-eligible Hispanic residents.
- Military/Veteran and Mall events continued to draw high percentages of Black EOIs.
- For Hispanic EOI percentages, the best event types were High School, Street Team, and Mall. The City noted in recent calls that it has pivoted toward more High School events for this reason.
- The City held a higher proportion of events in Brooklyn than in previous months, but those events yielded relatively low numbers of EOIs per event (across all demographics).
- Manhattan events garnered high numbers and proportions of Black EOIs relative to other boroughs. Manhattan events also garnered higher numbers of Hispanic EOIs than events held in other boroughs, as well as higher numbers than Manhattan events in previous months.

b) Engagements

The City has said it hopes to persuade legacy EOIs to take the current test by starting tutorials earlier, inviting them to events, and communicating with them frequently. The City sent invitations to tutorials and/or mobile academies to the approximately 70,000 individuals in this group in the summer and early fall of 2023. It did not run tutorials or mobile academies between October and December 2023, but stated that it would hold some tutorials in January and that mobile academies will resume in March. The following are topline takeaways about the City's engagement efforts to date:

- Only a small fraction of the approximately 70,000 legacy EOIs invited to a tutorial or mobile academy have responded, and even fewer (690) have attended a session.
- Of the 690 individuals who have attended a tutorial, 261 (38%) are Black, 354 (51%) are Hispanic, and 12 (2%) are white. Of the Black individuals invited to tutorials, 0.7% have participated; those figures for Hispanic and white individuals are 1.2% and 0.9%, respectively.
- Comparing the tutorial data provided by the City on December 5 (for tutorials through October 31, 2024) to the data it previously provided (for tutorials through August 31, 2024), our expert's analysis showed that the City, at each stage of tutorial engagement (invited to tutorial, scheduled, and participated), attracted candidates who were more likely to be Black and less likely to be Hispanic than in prior months.
- To date, all tutorials have been held at FDNY headquarters. The City plans to hold tutorials in other locations as it gets closer to the filing period.
- The population of those who have participated in mobile academies is more likely to be Hispanic and white than the invited population.
- The participation rate from those who scheduled attendance at a mobile academy is low for Black and Asian EOIs.

Given the low rate of response to the City's engagement efforts to date, it is difficult to assess the continued interest of the legacy EOI group. The City has asked legacy EOIs whether they are still interested, and it reports the number of legacy EOI candidates to whom the City has reached out (by email, phone, and/or text) who have advised the FDNY that they are no longer

interested in becoming firefighters. The City's position is that, unless a candidate responds "no" or affirmatively directs the City to stop engaging, the candidate is still interested and should be engaged during the campaign; but the extent to which these candidates remain sufficiently interested to become test-takers remains unknown. The City has stated that it will focus more on evaluating EOI engagement after it has more engagement data – including both responses to communications and further participation in the tutorials and mobile academies it plans to hold with greater frequency leading up to the exam – and the work of the City's advertising vendor has begun.

3. Staffing

At the October status conference, the Court directed the Monitor to provide reports on the timeliness with which EOIs are being entered into the City's data system, in part to ensure that the City's post-monthly reports are accurate. In early November, the City reported that there was a backlog of approximately 300 EOIs for the month of October, due in part to human error in data entry and in part to staffing issues. The City's December report of November data was delivered a few days late, because of holiday-related staffing issues. On January 4, 2024, however, the City reported that it was up to date with data entry (though it noted that this was possibly due to the lower number of EOIs collected in December), and the post-monthly report of December data was produced a few days ahead of time, on January 12. As noted above, although the City reported on February 1 that there was a backlog of January data to be entered, it stated on February 15 that the report due on February 14, when produced, would reflect most of the January data.

On November 9, the Monitor learned that Assistant Commissioner Nafeesah Noonan had been promoted; in addition to overseeing ORR, she is now Assistant Commissioner of Workforce Development and, in that new role, will also oversee Human Resources. The City

has indicated that over the long term it will likely hire another director for recruitment, but it has not yet done so.²³ The City asserts that there will be no oversight gap in recruitment, in part because (as noted above) it expects Deputy Commissioner Barbara Dannenberg to assist as part of the FDNY's personnel and workforce management team. The City reports that it currently has eight full-time Customer Service Representatives available for various activities relating to the recruitment campaign, including data entry, and it recently reported that it has gotten overtime approval for data entry by civilian staff. The City also has seven full-duty and six light-duty firefighters assigned to recruitment (twelve of whom are Black and one of whom is Hispanic). The City has also identified five firefighters who assist with outreach efforts on overtime, when needed. On the February 1 call, the City reported that the five cadets who had been assigned to recruitment data entry had graduated and were no longer available for this task and that incoming cadets were unlikely to be trained in time to help with the current campaign. On December 19, the City indicated that it had posted its need for new recruiters and that it had received approximately 150 responses. The Monitor has asked the City to provide updates with respect to these postings once there is information to report.

The Court directed the City to devote sufficient resources to the recruitment campaign, even under budget constraints. (The Monitor has also reminded the City that it has committed to tracking all information relating to budgeting and costs.) The Monitor will continue to seek staffing updates from the City, including once the ad campaign begins in April, at which time ORR will likely need to add staff to account for an expected increase in EOIs.

²³ The City has said it believes it would be challenging to transition duties to a new head of recruitment at this time, while ORR is working simultaneously on CPAT Round 5 and the recruitment campaign.

4. Media Strategy - Symphony Talent Campaign

As previously reported, the City’s marketing vendor, Symphony Talent, had a kick-off meeting with ORR on October 12. During a virtual meeting on November 20, 2023, Symphony Talent provided a high-level overview of its media and communications capabilities and an overview of its plan and projected timeline. It followed up with a more detailed presentation on December 22, during which it introduced the overall campaign strategy, branding, and sample “creatives,” including posters and digital ads. The presentation also included an overview of Symphony Talent’s planned engagement of legacy and new EOIs; its customer relationship management (CRM) functionality; the traditional and programmatic media that will be used;²⁴ its plan for targeting recruitment to specific populations and measuring the effectiveness of that targeting;²⁵ its plans for gauging ongoing interest; and the need to determine its communications schedule with the City and what its reports to the Monitor should include. Symphony Talent reported that it would make some adjustments after feedback from the Monitor and the other Parties.

In addition to comments and questions during the presentation, the Monitor and Plaintiffs-Intervenors sent written comments and follow-up questions on January 3 and 4, respectively. The Monitor noted various insights from the focus groups conducted by Horowitz Research that Symphony Talent should consider and asked for a detailed media plan, including the specific media that will be used to reach target audiences, and the specific formats and ads

²⁴ Programmatic advertising uses automated technology for buying advertising space using data insights and algorithms.

²⁵ Symphony Talent has noted Meta’s new restrictions on such targeting in the employment context and is exploring alternate means of targeting, including by advertising on minority-owned media or media with predominantly minority audiences, and creating “lookalike” audiences, once it has a sufficiently large initial contacts group.

that will be used during the campaign, including banners, posters, flyers, invitations, etc.

Plaintiff-Intervenors asked some specific additional questions about the media plan. The City said it would forward the feedback to Symphony Talent and report back soon. On January 9, Symphony Talent responded to the Monitor's question about radio advertising and to two of Plaintiffs-Intervenors' questions about social media advertising. The remainder of the questions and comments, and the request for the detailed media plan, remain outstanding. At the October conference, the Court directed the City to consider and respond to input from the Monitor and the other Parties before committing to and implementing its strategy, and the City agreed.

As noted during the November 20 and December 22 meetings, the blueprint calls for Symphony Talent to make monthly presentations regarding its progress. The slides used during the December 22 presentation state that Symphony Talent will provide reports to the City that include "full view analytics into each tactic, including all programmatic (online) media, email messaging, and SMS messaging." The Monitor has asked the City to identify what it plans to include in the reports to be circulated to the Monitor and the other Parties and has noted that they should include, at a minimum, metrics relating to the campaign – by type of media/channel (*e.g.*, how many people have been reached via social media posts, posters, etc.) and by race/ethnicity and gender, to the extent possible. In addition, the Monitor has asked to receive copies of any documents generated for special purpose calls between the City and Symphony Talent, including those that relate to the review of creative concepts and/or social strategy presentations. The City recently stated that it will circulate dates for a call with Symphony Talent during which all the issues above will be discussed.

E. Working Group

The Working Group Committee was established pursuant to the Disparate Treatment Settlement with the goal of "creat[ing] educational and other opportunities that will enhance the

ability of New York City students to pursue careers as New York City firefighters.” Proposed Stipulation and Order (Dkt. # 1291-1) ¶ 1(e).²⁶ The Monitor has received periodic updates on the two principal Working Group initiatives – the FDNY Fire Cadet program and the FDNY Explorer program, which have been described in detail in previous reports. *See* Monitor’s Fourteenth Periodic Report (Dkt. # 1651) at 13-14; Monitor’s Seventeenth Periodic Report (Dkt. # 1714) at 11-12; Monitor’s Nineteenth Periodic Report (Dkt. # 1761) at 17-18.

On July 25, 2023, the City reported that the initial Fire Cadet class had begun on June 5, 2023. The class started with 100 cadets, but some Cadets declined or failed to appear, and one was dismissed, reducing the class to 96 Cadets, including 22 Black Cadets (22.9%), 43 Hispanic Cadets (44.8%), and 39 white Cadets (40.6%). As reported by the City, in the first three weeks of training at the Fire Academy on Randall’s Island, the Cadets completed the first module of their academics curriculum, including CPR training. On June 26, the Cadets started their first 15-week work rotation, working in various offices of the FDNY, including the Bureau of Fire Prevention, Fire Operations, Office of Recruitment and Retention, Office of Diversity and Inclusion, and the Office of the Fire Commissioner. The Cadets are divided into two companies, and each company is divided into six squads, with the squad leader position filled by different Cadets in the squad on a rotating basis for the duration of the program.

The City reports that as of December 31, 2023, Fire Cadets had completed seven months of program activities. The period ended with a total of 87 Cadets. (One of the Cadets transitioned to the FDNY Fire Academy as a probationary firefighter.) The class includes 21 Black Cadets (24%), 37 Hispanic Cadets (42.5%), and 35 white Cadets (40%). All 87 Cadets

²⁶ As noted above, the Parties agreed that the Disparate Treatment Settlement would fall within the Monitor’s authority as defined in the MRO. *See* Stipulation and Order dated June 5, 2015; *see also* Memorandum & Order dated June 5, 2015 at 10.

filed their applications to take the Promotion to Firefighter exam with DCAS. The Fire Cadet Academy has begun providing concentrated test preparation as part of the curriculum.

According to the City's report, there are 13 "Cadet Cadre" members assigned to provide ongoing guidance and training to Fire Cadets – preparing them to eventually become probationary firefighters. Staffing also includes 25 Cadet Advisors, who are assigned to approximately four Cadets each and are required to make at least one contact per week with each of their Cadets.

III. EEO

A. EEO and Related Staffing

EEO Office – As most recently reported by the City, the FDNY EEO Office currently includes the following personnel:

Attorneys (10)²⁷

- 1 Assistant Commissioner
- 1 Deputy Directors
- 5 Investigations Attorneys
- 1 RA Attorney (handling requests for accommodations)
- 1 Intake Attorney
- 1 Training Coordinator

Non-Attorneys (3)

- 1 Office Manager
- 1 Analyst
- 1 Fire Operations Captain - Training

The current EEO Office staff thus remains six attorneys short of its pre-pandemic level of 16 attorneys, and one Deputy Director short of its pre-pandemic roster. The staff of five investigators remains three short of the eight investigators handling cases in mid-2019, *see*

²⁷ The investigative work of the EEO Office is conducted entirely by its attorneys (along with their other responsibilities such as firehouse inspections and EEO training).

Monitor's Twenty-Seventh Periodic Report (Dkt. # 1910) at 24; and a recently announced departure will soon add a vacancy.

The City has previously assured the Monitor and the Court that it will continue efforts to add staff until the roster of EEO attorney returns its pre-pandemic level. The City has filled one investigative attorney position since the last periodic report, and it continues to seek candidates to fill the remaining open positions.

At the January 11, 2024 status conference, the City also announced that EEO Assistant Commissioner Don Nguyen has taken on a new position as Deputy Commissioner and Chief Legal Officer for the FDNY, and that Hilit Tolani, who had previously served as a Deputy Director in the EEO Office, would return to the Office as the new Assistant Commissioner so that Assistant Commissioner Nguyen, who has been serving in both capacities, can fully transition into his new role.

The need to increase EEO staffing remains urgent, as the EEO Office continues to struggle to complete investigations in a timely fashion. The majority of substantial investigations currently exceed the presumptive 90-day limit prescribed by City EEO policy. As of January 20, 2024, for completed cases initiated in 2021, 2022, and 2023, among matters that involve fire operations personnel and claims based on race, ethnicity, or retaliation, and that the City has identified as requiring substantial investigations, 15 of 19 cases required more than 90 days to complete. For substantial investigations initiated in 2022 and 2023 (both completed and open) with the same parties and subject matters, eight of nine cases have exceeded 90 days in duration.²⁸

²⁸ These figures are based on cases for which the City has produced investigative materials to the Monitor. As previously reported, analysis of data from a larger sample of cases also shows a high

As most recently reported by the City on February 12, 2024, the average investigator caseload for the EEO investigative attorneys is 17 cases, and 41 cases have been assigned to five other EEO attorneys and supervisors.

CDIO Office – As reported by the City on February 14, 2024, in addition to the CDIO himself, the CDIO Office includes a Senior Director, two “Diversity and Inclusion Managers,” and a Program Manager.

EEO Counselors – More than a year ago, the City advised the Monitor that the FDNY’s team of EEO Counselors (firefighters and officers who act as liaisons between the firefighter force and the EEO Office) had experienced significant attrition. Monitor’s Thirty-Eighth Periodic Report at 72. As most recently reported by the City, there are currently 22 Counselors. In August 2023, the Assistant Commissioner advised that he had received preliminary approval to post and interview for enough additional Counselors to bring the total number up to 40 – ten fewer than the pre-pandemic team. But since that time no further steps have been taken to recruit additional Counselors, and approval for the additional positions has not yet been finally confirmed.

BITs Staffing – The Monitor has also continued to seek updates on staffing and caseloads in the Bureau of Investigations and Trials (“BITs”), which handles the disciplinary phase of EEO cases where the EEO Office has substantiated violations. As reported by the City on February 14, 2024, the BITs staff includes an Assistant Commissioner, a Deputy Director, four Associate

percentage of cases exceeding the 90-day limit. Based on an August 17, 2023 data set provided by the City, up to that date there were 48 completed EEO matters that (1) had been initiated in 2021, 2022, and 2023, (2) involved fire operations personnel, and (3) required two or more interviews (which the City has identified as indicating that they required investigation). Of those 48 cases, 34 required more than 90 days to complete. In the same category of cases initiated in 2022 and 2023, five of eight cases exceeded 90 days in duration.

Disciplinary Counsels, one Department Advocates, three Emergency Medical Technicians and three EMS Lieutenants.

B. Messaging and Training

1. Communications Regarding Climate Survey Findings

The Monitor has continued to receive updates on the City's efforts to communicate the findings of the climate survey to FDNY membership. The Monitor has emphasized that this is a critical step in addressing the issues the survey identified. As previously reported, the FDNY issued a series of Department-wide statements on the climate survey in June 2023, and it held a WebEx conference regarding the survey findings (which had previously been presented to senior leadership) for staff chiefs and Division chiefs in September 2023. On December 24, 2023, the City completed a series of firehouse visits (begun on September 23) in which the staff chiefs and Division commanders discussed survey findings with FDNY members. The program provided for at least four visits to each house in an effort to reach members working all shifts. On November 15, 2023, the City circulated a set of materials to the Monitor and the other Parties (including an excerpt from the climate survey report and a brief set of FAQs regarding the climate survey), which were used as resources for the firehouse visits.

Despite these notable steps, considerable further efforts in messaging and training will be required to address the issues, concerns, and misperceptions that the survey revealed. As discussed below in Part III.B.3, the Monitor has recommended areas in which topics relating to climate survey findings should be addressed more clearly, more extensively, and more forcefully in the EEO messaging that the City plans to roll out in the next few months.

At the January 11, 2024 status conference, Plaintiffs-Intervenors expressed concerns that in some instances messages regarding the issues identified in the climate survey were not delivered forcefully, and/or that they were undercut by observations that the survey was

conducted several years ago and that the Department had changed in the interim. Renewing a longstanding recommendation, the Monitor has urged the City to devise and implement ways of gathering feedback regarding the manner in which EEO-related messages are delivered and how they are received. The Monitor also intends to engage further with the City regarding its plans for a second, updated climate survey of the FDNY workforce – as discussed by the Court at the January 11, 2024 status conference.

2. Leadership Academy

The City has continued to pursue plans for a “leadership academy” to train FDNY officers and supervisors in leadership skills and techniques needed to foster and maintain a professional and inclusive workplace environment. The CDIO has been actively pursuing the leadership development project since approximately June 2023. And since July 2023 the CDIO and the Chief of Training have convened several meetings of a working group tasked with developing the curriculum for the academy, bringing together representatives of the different FDNY bureaus, union representatives, and other stakeholders. As previously agreed, the Monitor’s experts have attended the meetings and participated in developing topics and messages for the leadership academy training. The meetings to date have also included some representatives of affinity groups, and the Vulcan Society has attended the last several meetings.

In recent meetings, the curriculum development group continued to develop a draft course outline which the City first circulated before the November 20, 2023 meeting and which was based on the series of brainstorming discussions in previous meetings. The outline covers numerous important leadership themes but is still very much a work in progress, and considerable additional work will be necessary to convert the themes and key messages in the document into training materials and guidance for trainers. In its most recent meeting (on February 12, 2024), the group discussed the process for developing case studies and scenarios

illustrating key training messages, which are expected to be presented as exercises in the interactive sessions of the leadership training. The group has also completed work on a job posting for the training facilitator positions. Going forward, the group plans to meet monthly to discuss draft scenarios for the training, to be prepared by a subgroup including the CDIO and several stakeholders.

As curriculum development proceeds, the City has also continued efforts to identify and engage a training vendor who will work with the curriculum group to translate key leadership concepts and illustrative scenarios into detailed training content. The City has interviewed four vendors under consideration and reportedly expects to select a vendor within the next few weeks. However, the procurement process is projected to take several more months. In part as a result of these delays, the projected date for rolling out the initial round of pilot training sessions (previously projected for January 2024) has been postponed to the fall of 2024. The training for the full population of FDNY front-line supervisors has been postponed to the first quarter of 2025.

The delay in the planned launch of leadership training is very concerning. The leadership academy is intended to play a central role in addressing the climate survey findings and longstanding Monitor recommendations. Accordingly, the Monitor has reminded the City that it must complete the project substantially as originally conceived and presented to the Monitor and the Court. Senior FDNY leadership have frequently stressed the importance of the leadership training initiative. At the September 20, 2023 status conference, the CDIO presented the leadership academy project as a “critically important” part of the City’s plan to address the issues identified in the climate survey, and other FDNY representatives (Chief of Department Hodgens and Deputy Commissioner Pfeiffer) also noted the importance of the initiative.

Commissioner Kavanagh’s statements regarding the climate survey findings (including a July 21, 2023 public statement) have also noted the correlation found between effective leadership and “build[ing] a positive workplace climate” and committed the FDNY to “offer[ing] members of the FDNY training and skills to manage a modern, diverse, and professional workforce.” The CDIO’s June 1, 2023 report to the Commissioner (which the Commissioner has accepted) also called for training to “ensure that minimum levels of competencies include leadership strategies for leading a diverse workforce, conducting mediation, and encouraging positive socialization in the workplace, as well as understanding the dynamics of in-groups and out-groups, counseling and coaching, culture, effective communication, and command discipline.” The leadership academy project responds to longstanding Monitor recommendations (as summarized in a January 18, 2022 memorandum to the Parties) that the FDNY “provide and require more robust and frequent training on effective management of a diverse and inclusive workplace – including training on recognizing and resolving interpersonal conflicts, maintaining awareness of workplace climate, and proactive steps and techniques to create and maintain an inclusive workplace environment.” And it addresses a critical need for leadership training identified in the City’s own 2013 EEO report (Dkt. # 1167).

The Monitor plans to work with the City to look for ways of shortening the vendor procurement process and expediting work on the leadership development program, while also ensuring that the training incorporates essential messages and input from experts and key stakeholders. The Monitor has repeatedly asked the City to provide an updated plan for the project in writing, including the specific schedule of steps in the contracting process, along with the timeline and allocation of responsibility for further steps in developing and finalizing the

training presentation (including a description of the work product the internal working group is expected to produce and the additional work that the vendor will be expected to contribute).

The Monitor also plans to work with the City to seek ways in which the City can implement at least some key guidelines and communicate at least some key messages on leadership issues before the full rollout of the leadership academy training. The City has committed to taking such interim steps, and the Monitor will continue to seek details on the City's plans and follow its efforts in this area. For example, the Monitor has urged the City to finalize, issue, and publicize a set of new guidelines that clarify the role of senior firefighters and emphasize that officer responsibilities for addressing workplace conflicts and maintaining an inclusive and professional workplace climate are non-delegable.²⁹ The Monitor has also encouraged the City to prioritize and accelerate components of its EEO messaging plan (discussed below) that focus on the mission-critical nature of diversity, the role of EEO as a resource for officers, and the key role of leadership in managing firehouse conflicts and climate. The Monitor has suggested that messaging include tips on specific steps that company officers can take to monitor the workplace environment. The Monitor has also continued to follow up on long pending recommendations that officers be provided with guidance on "house rules"; that the FDNY require firehouse group chats to include (and be monitored by) officers³⁰; that Deputy

²⁹ The City provided the Monitor with a draft of the guidelines on August 14, 2023, on which the Monitor provided comments on September 29, 2023. Monitor's Forty-First Periodic Report at 57-58.

³⁰ The Monitor has repeatedly urged the City to enforce its existing policy requiring that FDNY-related social media groups be registered with the Department. The Monitor has recommended that groups comprising most or all FDNY members in a given workplace and used for work-related communications be registered with the Department and monitored by officers. Monitor's Fortieth Periodic Report at 67. In its February 12, 2024 comments on a draft of this report, the City asserted that such a requirement would be not be lawful and several asserted grounds. The Monitor intends to discuss the issue further with the City.

Chiefs include EEO and workplace professionalism topics in regular operational inspections and related discussions; and that the Department make it clear to operational commanders that failures to identify and report on conduct detrimental to workplace climate (through the Workplace Professionalism reporting system and other channels) will have adverse professional consequences. *See* Monitor's Forty-First Periodic Report at 54-55.

In recent meetings, some City participants have continued to suggest that the leadership development project may be limited by budget constraints, and the Monitor has repeatedly reminded the City and the other Parties that, as the Court had stated, the City must ensure that the necessary funding is provided for this and other important initiatives. As the Court noted at the January 11, 2024 status conference, "I don't want the City of New York to spend one penny more than is absolutely necessary to achieve all of our objectives, and I don't want the City of New York to spend one penny less than is necessary to achieve the objectives"

3. EEO Office Messaging and Training

In accordance with the Court's order following the October 2023 status conference, the City filed an EEO messaging plan on November 15, 2023 (Dkt. # 2222). As previously reported, the City had postponed creating a long-term, strategic EEO messaging plan for several years in order to await the results of the climate survey. The one-page plan the City filed on November 15, 2023 lists a series of ten messaging initiatives,³¹ with high-level topic summaries, scheduled

³¹ The ten listed messaging topics are

- Roles, Processes and Activities of the EEO Office and BITs
- EEO Compliance is Mission Critical
- EEO Misconceptions and Myths
- Leaders and EEO
- Politics and Divisiveness within the Workplace
- EEO, Effective Workplace Communication and Conflict Resolution

to be rolled out over approximately the next two years, along with other annual messaging and unspecified messaging “as necessary” reinforcing EEO policies. The plan also lists recurring events including annual EEO training and EEO inspections. The first two messaging topics were scheduled for delivery in December 2023 and January 2024.

As directed by the Court at the November 16, 2023 status conference, the Parties and the Monitor convened a meeting on January 2, 2024 to discuss the plan, at which the City provided some additional details in response to questions regarding the content, timing, and delivery of the listed messages.³² The Monitor, Plaintiffs-Intervenors, and the United States also offered general suggestions based on the messaging topics, while reserving further comments pending the City’s circulation of draft materials for the listed subject matters. For example, the Monitor and the other Parties suggested some changes in the timing of key messages (notably regarding political issues in the firehouse in connection with the 2024 election). The Monitor also suggested that messaging on the “misconceptions and myths” regarding the increased diversity of the FDNY (including false assertions that standards and performance have declined) should address disinformation directly and forcefully – stating clearly that misinformation regarding the impact of diversity on Department standards and performance is defamatory to the Department and undermines its mission. As noted above, the Monitor has also suggested that the City use

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- Recognizing and addressing Incivility and Bullying
 - Fairness in the Workplace
 - Responding to Misconduct in the Workplace and the Prohibition against Retaliation
 - Social Media Rights and Prohibitions

³² Comments and questions from the Monitor, the United States, and Plaintiffs-Intervenors provided the agenda for the January 2 meeting. The United States provided written questions and comments on the City's plan on December 21; the Plaintiffs-Intervenors and the Monitor provided additional comments and questions on December 22 and December 28 respectively.

upcoming rounds of messaging as opportunities to communicate key leadership messages, given the long postponement in the rollout of the leadership academy project. For example, the Monitor has suggested that messaging emphasize the value of consultations with the EEO Office as a resource for officers dealing with issues of firehouse climate and interpersonal conflict.

The City circulated an initial set of draft materials for the first round of messaging, regarding the role of the EEO Office, on January 11, 2024, and the Monitor provided comments on the drafts on February 15. The Plaintiffs-Intervenors and the United States also circulated comments and questions on the draft materials – on January 24 and January 30 respectively. In its January 11 message providing the initial drafts, the City indicated that additional materials would be circulated after the January 15 holiday. But to date no further materials have been provided. The City has agreed to circulate drafts of the materials for each round of messaging on a rolling basis as soon as they are completed for later rounds.

The Monitor and the other Parties have also noted the importance of ensuring that messages are received by all members of the target audience. For example, department orders should be read at roll call, and there should be confirmation that the reading has taken place. The City has confirmed that the WebEx meetings in the plan will be attended by all members in stages, and it has agreed to consider additional ways of ensuring that messages are received and gathering feedback on their impact. The Monitor has also reemphasized the recommendation that the City involve officers in the delivery of messaging. (There is some provision for this in the existing plan, but the specific roles for officers have not been described in detail.)

In addition to the messaging topics listed in the City's November 15, 2023 plan, the EEO Office has also continued to work on a small number of communications reinforcing specific

EEO policies (following up on similar statements issued in 2022). The City reported on January 15, 2024 that the draft statements were being finalized. But no new statements have been issued.

The EEO Office has also developed an updated EEO training presentation, which was originally scheduled to be rolled out in summer of 2023. The City provided a draft to the Monitor on December 20, 2023, and in a January 5, 2024 conference call with the City, the Monitor responded with some initial comments and asked the City to provide additional details regarding the guidance provided to training staff for discussion of the scenarios in the training presentation. The Monitor provided some further comments on February 15 and expects to follow up further once the City provides the additional information requested regarding guidance to trainers.

C. CDIO Initiatives

The Monitor has continued to encourage the City to move forward actively on a set of nine recommendations made by the CDIO in a June 1, 2023 report and approved by the Fire Commissioner. As previously reported, the recommendations included messaging initiatives, policy reforms, organizational changes, and other measures intended to improve FDNY culture, leadership, and accountability. *See* Monitor's Fortieth Periodic Report at 54-56; Monitor's Forty-First Periodic Report at 48-51. Although the City has reported some progress toward implementing some of the recommendations (notably the change in exam bonus points, discussed below in Part VI.B), most remain in various stages of research and planning; and for some key measures, including plans to combine and coordinate the investigative and disciplinary

work of the EEO Office and BITs under a new “Professional Standards Division,” essential details remain to be determined.³³

Professional Standards Division – The Monitor has continued to urge the City to use its plans for a Professional Standards Division as an opportunity to implement needed reforms in BITs procedures to improve the timeliness, consistency, and transparency of BITs investigations. *See* Monitor’s Fortieth Periodic Report at 71; Monitor’s Forty-First Periodic Report at 50. Before the Monitor’s last report, the Monitor asked the City to provide additional details regarding the proposal as its research moves forward – including the following:

- specifics on the employment data that will be tracked by the Professional Standards Division
- plans to establish new procedures for BITs to align with EEO procedures
- plans for a central repository of complaints and disciplinary matters
- the role of the Risk Management Unit in addressing issues of firehouse climate and how its role will relate to the leadership training initiative.

The Monitor also has renewed a pending request (sent July 10, 2023) for the City to produce an updated account of dates of referral and dates of disciplinary action for EEO cases referred to BITs since the beginning of 2021.

Disciplinary Matrix – The Monitor has continued to follow up with the City regarding a draft disciplinary matrix that the City previously advised it had prepared to implement the CDIO’s recommendation to “develop and implement disciplinary guidelines that are equitable, consistent, free of undue influence, and clearly communicated to and understood by all levels of the Department.” Monitor’s Forty-First Periodic Report at 49. The Monitor requested a copy of the matrix before the last periodic report, and has renewed the request in recent discussions, but the City has not yet circulated the draft.

³³ As noted in the Monitor’s previous report, the City has indicated that it expects to complete research regarding best practices for the Professional Standards Division in June 2024.

Leadership Advisory Council – The Monitor has also continued to seek updates regarding the leadership advisory council (“LAC”) recommended by the CDIO. And in response to Monitor inquiries, on February 12, 2024 the City provided a further general description of the LAC’s planned mission and membership. As reported by the City, the LAC will be tasked with making recommendations and tracking progress in initiatives relating to the Department’s diversity, equity, and inclusion goals. It will review and make recommendations in numerous areas of the Department including messaging, education and training, policy and procedures, recruitment, resource allocation and leadership development.

The City reports that the LAC will be chaired by the Fire Commissioner with assistance and facilitation by the CDIO, and with participation by stakeholders throughout the Department. In addition to the Fire Commissioner and CDIO, the LAC will include the First Deputy Commissioner, Chief of Department, Chief of Fire Operations, Chief of EMS, Chief of Fire Prevention, Chief of Staff, Chief of Training, Deputy Commissioner of Human Capital, and other members of the Department selected by the Fire Commissioner or CDIO to participate. The City advised that affiliated organizations whose mission and purpose aligns with the diversity, equity and inclusion goals will be asked to participate as well as representatives of designated labor organizations.

As of the Monitor’s previous report, the City advised that the council would begin meeting in the first quarter of 2024, but the precise launch date has not yet been selected. The LAC meetings will be held quarterly and working groups or subcommittees established under the LAC may meet in between the larger quarterly meetings. The Fire Commissioner will work with the CDIO and other stakeholders to set the agenda for each council meeting. Requests for

inclusion of a particular item to the agenda can be made to the CDIO prior to the council meeting.

D. Officer Performance Evaluations

The Monitor has continued discussions with the City regarding the FDNY's implementation of the EEO metric in performance reviews for company-level officers. As previously reported in detail, based on the materials provided by the City to date (including data through the 2021 cycle of officer evaluations), the Monitor has not been able to fully confirm that the EEO metric consistently reflects officers' EEO performance and their support for the mission of the EEO Office, or that the system is informed by input from the EEO Office in all appropriate cases. Monitor's Forty-First Periodic Report at 52-53; Monitor's Fortieth periodic Report at 61-62.

The Monitor is still awaiting production of evaluation data and related materials from the 2022 and 2023 performance review cycles, pursuant to the Monitor's standing request. The Monitor hopes that these materials will provide a further, updated picture of the functioning of the evaluation system.

The Monitor also continues to await responses to several other questions and requests, which the Monitor has repeatedly renewed in regular communications with the Parties, including the following:

- Two follow-up questions regarding reviews from the 2019 cycle, originally posed in an October 13, 2021 message (*see* Monitor's Thirty-Seventh Periodic Report (Dkt. # 2119) at 58);
- Questions first posed more than a year ago regarding the City's procedures for analyzing patterns in officer performance and the types of performance review data and analyses

that the City is prepared to share with the other Parties³⁴ (*see* Monitor’s Thirty-Fifth Periodic Report at 51-52); and

- The Monitor’s request that the City provide the other Parties with cumulative figures showing the ratings for officers in workplaces associated with EEO investigations. *See* Monitor’s Thirty-Fifth Periodic Report at 53.³⁵

As previously reported, on December 5, 2022, responding to a Monitor recommendation, the City stated that it intended to issue a “buckslip” to advise officers that EEO ratings and EEO performance will be factors in discretionary promotion and assignment decisions, but the communication still has not yet gone out to FDNY personnel. The Monitor has repeatedly reminded the City to follow through on its plan to issue the notification, but it has not yet done so.

E. Inspections, Investigations, and Compliance

1. Monitor Report on EEO Investigative Procedures and the Duration of Investigations

As stated in the Monitor’s previous reports, in consultation with the Court, the Monitor postponed filing a report on EEO investigative procedures and the duration of EEO investigations to observe and account for the effect of changes in staffing and revised practices. Toward that end, the Monitor has obtained a series of updated data sets from the City and circulated a series of drafts of the report and recommendations to the City and the other Parties. The Monitor is still awaiting an updated account of dates of referral and dates of disciplinary action for EEO cases referred to BITs since the beginning of 2021.

³⁴ Previous communications relating to these issues are recounted in detail in previous reports. Monitor’s Thirty-Fourth Periodic Report (Dkt. # 2058) at 40 n.21; Monitor’s Thirty-Third Periodic Report at 38-39; Monitor’s Thirty-Second Periodic Report at 37; Monitor’s Thirty-First Periodic Report (Dkt. # 1990) at 36-37.

³⁵ When first issued, that request referred to evaluations from earlier cycles of reviews. The Monitor has updated the request to include data from the 2020 and 2021 cycles.

2. Inspections and Monitoring

As of February 12, 2024, the City reported that the EEO Office is currently conducting one to two firehouse inspections per week. As noted in the Monitor's previous reports, EEO inspectors have begun using a checklist of "red flags" in EEO inspections, listing items that may be associated with workplace conflicts or a hostile work environment. But to date the City has not reported any steps to add the list as a feature to the EEO inspection database.

The City previously declined to implement the Monitor's recommendation (first communicated on January 18, 2022) that the City periodically analyze trends in personnel data (such as requests for transfer and medical leave) associated with FDNY workplaces, to flag possible problems with workplace climate or management practices in specific locations. But in discussions of the expanded data analyses recommended in the CDIO's June 1, 2023 report to the Commissioner, the Monitor encouraged the City to reconsider including analyses of personnel data in the enhanced and expanded data analyses that the CDIO recommended in his June 1 report. *See* Monitor's Fortieth Periodic Report at 68. More broadly, as stated in previous reports, the Monitor has also previously noted that the City must establish and operate systems for regularly analyzing relevant data to identify disparate impact in both the hiring process and post-hiring employment decisions. *See, e.g.,* Monitor's Twenty-Sixth Periodic Report (Dkt. # 1896) at 35-36.

3. EEO Investigations

The Monitor has also continued to assess the FDNY's EEO investigative practices by reviewing investigative materials produced by the City and by engaging in bi-weekly conference calls with the EEO Assistant Commissioner regarding open cases. *See* Monitor's Thirty-Eighth Periodic Report at 88-89 & n.70, 71 (recounting the history of the City's productions of case materials).

The City has continued to produce investigative files from EEO matters completed since the Monitor provided the City with a January 18, 2022 memorandum recommending improvements in investigative practices, but some additional files remain to be produced.³⁶ Monitor's Forty-First Periodic Report at 59. The Monitor plans to provide the City with an updated set of written comments and recommendations regarding EEO investigative practices once the remaining files have been provided and analyzed. Although recent cases have reflected some improvement in investigative practices, the Monitor has continued to observe further instances of some of the same deficiencies in investigative practices that were discussed in the Monitor's January 2022 memorandum. *See* Monitor's Fortieth Periodic Report at 70-71; Monitor's Thirty-Ninth Periodic Report (Dkt. # 2163) at 74. And the Monitor has discussed some of those issues in regular calls with the City regarding EEO topics.

IV. Medical Exam

In every Exam 7001 attrition metrics report, beginning with the December 2019 report and including the most recent Attrition Metrics Report, dated December 14, 2023 the City has reported statistically significant adverse impact against Black and Hispanic candidates in the Medical Exam. The City's December 14 metrics show that, of the candidates who appeared for the Medical Exam, 78.9% of Black candidates, 84.4% of Hispanic candidates, and 90.4% of white candidates have been medically qualified to date. The City reports that these figures show disparate impact against both Black and Hispanic candidates. *Id.* at 26. Since the previous (June 1, 2023) attrition metrics report, the gap between the Hispanic and white qualification rates has slightly improved (though there continues to be disparate impact against Hispanic candidates),

³⁶ For several cases, the City has provided final memoranda summarizing EEO Office findings, which the Monitor has reviewed, but it has not yet provided full investigative files called for by the Monitor's standing request.

but the gap between the Black and white qualification rates has worsened, with the Black qualification rate now 11.5% below the white rate and showing even greater disparate impact than six months before.

The City also reports that 9.5% of Black, 6.7% of Hispanic, and 7.1% of white candidates have voluntarily attrited before their scheduled initial Medical Exam appointment.³⁷ In addition to those who have attrited, the numbers and percentages of pending candidates are also very concerning, especially this late in the life of the hiring list. At the expiration of the Exam 2000 list, the candidates who remained in pending medical status (*i.e.* had appeared for their initial medical appointments but did not yet have a final determination that they were qualified or not qualified) were never disqualified outright, but they lost the chance to *become* qualified, and any who *would* have been qualified did not make it to appointment in time. Based on data provided by the City on December 14, 2023, the Hispanic pending rate is one and a half times higher than the white rate, and the Black pending rate is now nearly twice as high as the white rate. There are 66 Black and 81 Hispanic candidates in pending medical status. These candidates, who are so near the end of the hiring process, are extremely valuable to the City's efforts to diversify the ranks.

As noted above, the BHS Attrition Metrics report of medical sub-step data as of December 2023 was produced on February 12, 2024, after a delay the City took to perform a "deeper dive" analysis. That analysis apparently discovered previous reporting errors, including reports of disparate impact in certain sub-steps of the Medical Exam. The Monitor's experts will

³⁷ In Tables 25 and 26 of its December 14 Attrition Metrics report, the City reports that there is disparate impact against Black and Hispanic candidates in voluntary attrition from the Medical Exam step. The Monitor believes the City may have mistakenly copied and pasted data from Tables 23 and 24 and that there may not be disparate impact in voluntary attrition from the Medical Exam.

review and discuss with the City the newly produced report and the City's data entry and review systems. The Monitor cannot yet determine to what extent, if any, the City's recently reported misclassification of disqualification data has affected the conclusions in its December 14, 2023 report of overall attrition metrics or any of the monthly reports it has produced to date. This report will therefore summarize the disqualification data we received in December and January and will be updated in the next periodic report.

The data in the City's January 19 update on the four specific disqualification reasons that have historically been most associated with disparate impact in the Medical Exam indicated that there was disparate impact against Black and Hispanic candidates in the PFT, and against Black candidates on the Stairmill and weight tests. Although the Monitor has not had time to review it, the City states that the February 12, 2024 BHS Attrition Metrics report shows that there is only disparate impact in the PFT.

Although only 28 Black and 33 Hispanic candidates have been disqualified by the Medical Exam so far, the data show that, of the 493 Black and 781 Hispanic candidates who have made it to the Medical Exam step, only 352 Black (71.4%) and 615 Hispanic (78.7%) candidates have emerged as qualified.³⁸ The remainder of these candidates (including 113 Black and 133 Hispanic candidates) – all of whom made it through the lengthy and arduous hiring process to this point – are part of the increasingly high percentages of Black and Hispanic candidates who have either voluntarily attrited from or are pending at the Medical Exam, and time is quickly slipping away for the pending candidates to become firefighters; candidates who remain in pending status when the list expires lose the chance to become qualified and make it to

³⁸ 83.9% of white candidates have been qualified.

appointment. It is urgent that the City help the growing number of pending Exam 7001 Black and Hispanic candidates move through the Medical Exam to hire.

It is also clear that the negative impact of the Weight and Stairmill tests (and thus the Medical Exam overall) is not being fully appreciated by looking only at disparate impact analyses. Some candidates who are unsuccessful in their initial attempts to pass the Stairmill and weight tests voluntarily attrit at some point, rather than continuing to come back to take tests they cannot (or believe they cannot) pass. (For example, candidates who do not pass the weight test on a first or second attempt but never return for further permitted weigh-ins are not considered “disqualified,” they are considered to have voluntarily attritted.) These candidates, despite having failed to qualify on the Stairmill or for weight, are not included in the count of disqualified candidates, and they are not included in disparate impact analyses, which lowers the perceived impact of these tests on qualification and the success rate of Black and Hispanic candidates.

It is critical that the City address the full landscape of reasons for which Black and Hispanic candidates are not getting through the Medical Exam at the same rates as white candidates. It must seek to lessen not only the disparities in candidates who are determined by BHS to be medically disqualified, but also the other ways – including pending status and voluntary attrition – in which the Medical Exam has served as a barrier to the Academy for reachable Black and Hispanic Exam 7001 candidates. The City must continue to urge Black and Hispanic candidates to appear for their initial Medical Exam appointments, to use the medical and fitness resources and guidance available to them, to take advantage of their opportunities to retest, and not to give up. The Monitor has been working with the Monitor’s medical expert to explore whether further guidance or programs could help improve results, possibly by including

nutritional, weight loss, and other advice in counseling given to candidates. This and other possible suggestions will be shared with the City after the Monitor analyzes the BHS Attrition Metrics report produced by the City on February 12, 2024. The City must develop new strategies to help Black and Hispanic candidates pass the Stairmill test and/or attain a qualifying weight and thereby move out of pending status into qualification.

V. Character Screening by the CID and PRB

The City's December 14, 2023 Attrition Metrics Report continued to show statistically significant disparities between Black and white candidates and between Hispanic and white candidates in the rates at which candidates are referred to the PRB. Among candidates referred to the PRB, the City's analysis shows no statistically significant disparities in rates of disqualification between demographic groups. However, a further analysis performed by the Monitor using the City's figures continued to find statistically significant disparities between Black and white candidates in the rates at which all candidates in each group who receive any final decision from the character review process (either a no-referral decision or a final decision from the PRB following referral) were deemed qualified as to character.³⁹

As described in prior reports, in 2022 the Monitor and the Parties discussed outstanding proposals for reforms in standards and procedures, along with issues relating to analyses of the character review process. *See* Monitor's Thirty-Seventh Periodic Report at 75; Monitor's Thirty-Second Periodic Report at 52-53; Monitor's Thirty-First Periodic Report at 48-51; Monitor's Thirtieth Periodic Report (Dkt. # 1976) at 61-63. The Monitor approved the City's proposal to

³⁹ An additional separate analysis by the Monitor also continued to find a statistically significant disparity between Black and white and between Hispanic and white candidates in the rates at which they were either (1) disqualified or (2) hired with extended probation. (The analysis combined the percentages for both outcomes in each group and then compared the combined figures between groups – *i.e.* percentage of Black candidates with either outcome vs. percentage of white candidates with either outcome.)

change several of the criteria governing referral to the PRB, on the condition that the City provide additional analyses to show the projected net effect of the changes on inter-group disparities in candidate referrals and PRB outcomes. Monitor's Fortieth Periodic Report at 76-77. On April 12, 2023, following discussion, the Monitor provided the City with a detailed request listing specific analyses that the Monitor requested the City to conduct. *See id.* at 77 (summarizing analyses). The City still has not provided the requested analyses.⁴⁰ Given the passage of time, the Monitor has also asked the City to provide analysis of candidate outcomes since the City modified the referral criteria.⁴¹

In addition to disparities in disqualifications, the Monitor also continues to emphasize that the City must perform and provide analyses of the rates at which candidates in different demographic groups are hired with extended probation, which, as the Monitor has repeatedly noted, constitutes a material burden on firefighters' terms of employment and exposes them to summary termination. The City's December 14, 2023 Attrition Metrics Report incorporates some analyses that include extended probation rates for only the sub-set of candidates with negative character review outcomes (disqualified, or hired with extended probation). But the City's analysis did not include data or conduct analyses for the complete pool of candidates that received character review decisions (both positive and negative), and did not attempt to evaluate

⁴⁰ Before the last periodic report, the City advised that the report was nearly complete, but it remains outstanding.

⁴¹ The Monitor also asked the City whether it intended to reconsider candidates referred under criteria that are no longer applicable to determine whether they would have been disqualified under the new system. In its February 12, 2024 comments on a draft of this report, the City reported that it had reconsidered disqualifications for 10 candidates and rescinded disqualifications for 9 of the 10 it reviewed. The Monitor is pursuing further inquiries with the City to confirm how the 10 candidates were identified for review and the criteria applied in the reconsiderations.

whether there is any disparity in the rates at which candidates were disqualified or given extended probation in the character review process as a whole.

The Monitor also plans to continue discussions with the City and the other Parties regarding ways to identify, analyze, and address any disparities in voluntary attrition attributable to the character review process – either because of the administrative and procedural requirements it imposes on candidates or because of the deterrent effect it may have on candidates with complicated criminal or employment histories.

As the Monitor has previously emphasized, if analyses continue to show that the process, even with the latest reforms, has a disparate impact adverse to Black or Hispanic candidates, the City will be required to validate the process as job-related. *See, e.g.*, Monitor’s Thirty-Seventh Periodic Report at 76; Monitor’s Twenty-Ninth Periodic Report at 79.

VI. Firefighter Exam

Pursuant to Paragraph 7 of the MRO, the Monitor is charged with overseeing the development of examinations to screen entry-level firefighter candidates. The City currently plans to administer the next open-competitive exam in November and December of 2024.

A. Exam Development

For Exam 7001, the City’s testing consultant, PSI Services LLC (“PSI”) – in consultation with experts for the Monitor and the other Parties – developed forms of the computer-based test that, based on data analysis, were “equivalent” to one another and to the previously-validated CBT used for Exam 2000. The City is currently working with Talogy (PSI’s successor) to develop the upcoming exam, Exam 4044. Talogy will also administer and analyze the results of the exam.

In August 2023, the City circulated a schedule projecting that Talogy would complete its confirmation of previous job analyses by November 2023; develop and pilot test four new forms of the validated exam (including questions, narration, video production) by September 2024; and assemble and publish the final forms by October 2024. The schedule included time for the Monitor and the other Parties to provide input.

On October 26, 2023, the City held a meeting with DCAS, Talogy, the Monitor, the other Parties, and their respective experts to provide an overview of the exam development process. Talogy noted that the Exam 7001 forms took two years to develop, that there was insufficient time to develop entirely new forms before the upcoming administration period, and that Talogy would instead be using forms previously developed for Exams 2000 and 7001, making minor alterations they believe will sufficiently guard against any exposure the forms had during previous administrations.⁴² Talogy stated that the schedule for the job analysis – its first task – had been amended, and that it would be completed in January 2024. As of the date of this report, however, the job analysis has not yet been completed.

As they did during the development of Exam 7001, experts for the Monitor and the other Parties have been meeting with Talogy for updates and discussions.

B. Bonus Points

The City has increased the number of bonus points New York City residents will receive on exam scores from five points to ten points, as it has done on the NYPD exam. At the September meeting where the City first advised the Monitor of the change, the Monitor asked the City for its analysis of the effect the increase in points is projected to have on the racial/ethnic

⁴² Talogy plans to use portions of two of the Exam 7001 forms for the cognitive questions and the Exam 2000 form for the non-cognitive questions, all with sufficient changes to make cheating impossible.

mix of reachable candidates from the next exam. *See* Monitor's Forty-First Periodic Report at 48-49. The City has said that it will perform and circulate an analysis by mid-February.

VII. Additional Issues

On an ongoing basis, the Parties and the Monitor consider a range of issues and perform an array of additional tasks relating to enforcement of the MRO. During the period covered by this report, these activities have included the following:

- Discussions regarding individual candidates who are or claim to be entitled to relief under the Court's Orders, including their interactions with the FDNY, documents they have received, and their rights and remedies;
- Addressing questions and disagreements among the Parties regarding the status of specific candidates and other issues that are not addressed elsewhere in this report and that fall within the MRO or Disparate Treatment Settlement; and
- Frequent calls, meetings, and correspondence with the Parties regarding the full range of issues related to implementation of and compliance with the MRO.

Dated: February 15, 2024
New York, New York

/s/
Mark S. Cohen